IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

OP.No. 26675 of 2002(A)

PETITIONER:

M. PRABHAKARAN, TAHSILDAR,
MANANTHAVADY, WAYANAD DISTRICT.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS:
----

1. **STATE OF KERALA, REPRESENTED**
   BY SECRETARY TO GOVERNMENT, FINANCE DEPARTMENT
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE COMMISSIONER FOR LAND REVENUE,**
   LAND REVENUE COMMISSIONERATE, GOVERNMENT
   SECRETARIAT, THIRUVANANTHAPURAM.

3. **THE DISTRICT COLLECTOR, WAYANAD.**

BY SPL. GOVT. PLEADER SRI.N.MANOJ KUMAR(FINANCE)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.45375/02, IN IA. NO.13901/02
IN OP. NO.26675/2002

DISMISSED

03.07.2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROCEEDINGS DT. 18.3.2000 BY THE ACCOUNTANT GENERAL TO THE DISTRICT COLLECTOR, WAYANAD.

EXT.P2:- COPY OF THE ORDER DT. 10.8.0-1 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P3:- COPY OF THE ORDER DT. 4.10.01 ISSUED BY THE 1ST RESPONDENT.

EXT.P4:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE MINISTER FOR FINANCE DT. 15.10.01 .

/TRUE COPY/

P.A.TO JUDGE

tss

K.BALAKRISHNAN NAIR, J.

O.P. No.26675 of 2002 A

Dated this the 3rd day of July, 2007.

JUDGMENT

The petitioner, while working as a Head Clerk in the Revenue Department in Wayanad District, was granted selection grade on completion of 25 years of service on 18.7.1991. He opted to come over to the revised scale of pay in the 1993 pay revision with effect from 1.7.1993. Later, the petitioner was promoted as Deputy Tahsildar on 24.12.1993 and as Tahsildar on 8.12.1999. While so, by Ext.P1 proceedings dated 18.3.2000, the Accountant General issued a direction to ignore the selection grade granted to him on 18.7.1991 on the ground that during the first 25 years of his service, the petitioner got 3 regular promotions. The petitioner represented against Ext.P1 before the Government. But the Government passed Ext.P2 dated 10.8.2001 rejecting his representation.

2. In view of the above development, on 15.9.2001, the petitioner exercised re-option concerning the 1993 pay revision. That re-option was rejected by Ext.P3. Hence this writ petition challenging Ext.P3.

3. It is not in dispute that if pay has to be revised pursuant to court orders or as a result of retrospective promotion, the incumbent is entitled to re-opt. But, according to the respondents, option cannot be exercised on cancellation of promotion. The petitioner submits that the point raised by him is covered by several decisions, including the one in O.P.No.20280/01 dated 11.3.2002. The petitioner also relies on para 15 of 1997 pay revision order, which reads as follows:

> ***"The option once exercised shall be final. In the case of subsequent reversion (after the exercise of option as per these rules), the employee will be allowed to exercise option in respect of the lower post also, provided such option is exercised within a period of three months from the orders of revision."***

The above quoted rule also supports the petitioner's claim, it is contended.

4. The respondents have filed a counter affidavit reiterating the stand taken by them in Ext.P3.

5. Heard learned counsel on both sides.

6. Learned Government Pleader points out that the cancellation of selection grade cannot be treated as reversion and therefore, Rule 15 of the 1997 pay revision cannot have any relevance.

7. As a result of cancellation of the selection grade, the option exercised by him on 1.7.1993 has become meaningless. It was cancelled only in 2000. So in the light of the decisions of this court mentioned above, the petitioner is entitled to exercise fresh option in the place of the option given in 1993. It is declared so.

8. In the light of the above development, Ext.P3 is quashed and the competent authority among

the respondents is directed to reconsider the question of acceptance of the option exercised by him on 15.9.2001, in accordance with law, within two months from the date of production of a copy of this judgment.

Original petition is disposed of as above.

Sd/-

(K.BALAKRISHNAN NAIR)
JUDGE

sk/

//true copy//

K.BALAKRISHNAN NAIR, J.

O.P. No.26675 of 2002 A

JUDGMENT

03rd JULY, 2007.